



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:

HARKNESS et al.

Serial No.: 09/955,691

For: DETECTION OF MEDIA
LINKS IN BROADCAST
SYSTEMS

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Examiner: Jason P. Salce

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) James A. Flight
) Registration No. 37,622
) Attorney for Applicant
)

REPLY BRIEF

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Sir:

In response to the Examiner's Answer mailed June 2, 2006, Applicants respectfully submit the instant Reply Brief on Appeal in accordance with 37 C.F.R. § 41.41.

I. Introduction

In response to the applicants' appeal brief which demonstrated that the Examiner's erroneous claim construction was made in a vacuum without reference to the applicants' disclosure or the prior art, the Examiner's Answer, for the first time, attempts to find support for the Examiner's erroneously overbroad construction of the term "media link" in the applicants' specification. However, although the Examiner is

now apparently belatedly attempting to morph his position into conformity with the law requiring the Office to construe the claims in light of the specification and not in a vacuum, as demonstrated below the Examiner's Answer continues to misconstrue the term "media link" to have an erroneously overbroad meaning that is inconsistent with the applicants' specification and the cited art.

II. Reply To Examiner's Argument For Ground 1 on Appeal

A. The Examiner Has Already Concluded That A Broadcast Signature Is Not A Media Link

At the outset, it is necessary to correct what appears to be a "cutting and pasting" or typographical error in the Examiner's Answer. In particular, page 11 of the Examiner's Answer erroneously states, "The examiner notes that this definition (in bold) of a media link clearly read [sic] on the *broadcast signature* of Thomas." (Examiner's Answer, Page 11)(emphasis added). Applicants believe the Examiner's usage of the term "broadcast signature" in this sentence to be unintentional and that the Examiner intended to use "ancillary code" in place of the term "broadcast signature." Applicants' belief in this regard is based on the fact that, in response to the first appeal brief wherein the applicants convincingly demonstrated that a broadcast signature is *not* a media link, the Examiner reopened prosecution by stating, "*The examiner agrees with Applicant on how a broadcast signature does not contain a media link ...*" (Office action dated August 11, 2005, Page 2)(emphasis added). Therefore, unless the Examiner is again reversing himself and improperly completely changing the focus of the appeal, it is respectfully submitted that this sentence from the Examiner's Answer

should be stricken as erroneous, or amended to substitute the term “ancillary code,” for the term “broadcast signature.”

To the extent the Examiner is resurrecting the errored “broadcast signature is a media link” argument previously disposed of through the first appeal brief, the applicants refer the Board to the First Appeal Brief filed in this case for a complete exposition of why a broadcast signature is not a media link and request immediate reversal of the Examiner’s erroneous rejections on the grounds specified in the First Appeal Brief. To the extent the Examiner’s sentence was intended to reference ancillary codes, not broadcast signatures, it is demonstrated to be false in the Second Appeal Brief and the follow sections of this Reply Brief

**B. The Term “Media Link” Does Not Encompass
The Ancillary Codes Of Thomas**

1. The Examiner’s Piano Is A Harp Analysis

The Examiner’s Answer distorts the applicants’ definition of “media link” in an attempt to belatedly support the Examiner’s erroneously overbroad construction of that term. In particular, the Examiner’s Answer states:

The examiner … notes that the Applicant [sic] specification clearly states, “media links include URLs embedded in video and/or audio, surrogate URLs, or any other links in video and/or audio that link a content recipient to content provided by a content provider (such as a Web Site) or to content provided elsewhere in the video and/or audio whether such content is stored in cache or not.”

(Examiner’s Answer, Page 11)(emphasis in original). The Examiner’s Answer then proceeds to argue that the emphasized portion of the applicants’ definition reads upon

the ancillary codes of applicants' own prior Thomas Patent¹. (Id.) However, as even a cursory review of the Examiner's Answer will demonstrate, the Examiner's argument is not based on the entirety of the emphasized portion of the above quoted definition. Instead, the Examiner considers only a limited phrase from the emphasized portion of the definition and then argues that, since the ancillary code of Thomas allegedly fits this sliver of the total definition of media link, an ancillary code is a media link. However, it will be self-evident to the Board that the Examiner's technique of demonstrating that a portion of a definition is met, is not sufficient to demonstrate that the actual definition as a whole is satisfied.

As an example, the Random House dictionary defines a harp as "a large musical instrument having strings stretched across a triangular frame, played by plucking with the fingers." If one can interpret the term "harp" to cover anything fitting a portion of this definition, for example, "a large musical instrument having strings," then one can conclude that a piano is a harp because a piano is indeed a large musical instrument having stings. However, upon reviewing the totality of the definition of a harp (i.e., a large musical instrument having strings *stretched across a triangular frame, played by plucking with the fingers*), it is immediately evident that a piano meets only a phrase from the definition of a harp, not the definition in total, and, thus, a piano is not a harp. From this example, it can be readily seen that it is illogical to base arguments of equivalence on partial definitions, and that pursuit of such illogical reasoning can lead to absurd results such as concluding that a piano is a harp.

¹ Daozheng Lu is an inventor of the Thomas Patent and the application on appeal, and both of those intellectual properties are assigned to Nielsen Media Research, the real party of interest in this appeal.

Turning to the Examiner's analysis, it is immediately evident that the analysis of the Examiner's Answer falls precisely into the "piano is a harp" category. To demonstrate this point, the Board's attention is respectfully directed to Pages 11-12 of the Examiner's Answer. In those pages, each reference made to the definition of media link quoted from the Applicants' specification cites only the phrase "or any other links in video and/or audio that link a content recipient to content provided by a content provider" and ignores the remainder of the definition. For example, the Examiner states:

Specifically, regarding the recitation, "or any other links in video and/or audio that link a content recipient to content provided by a content provider", note Column 11, Lines 40-42 and Lines 50-54 for the ancillary code (being interpreted as the "media link" by the examiner) uniquely identifies the program and/or station.

(Examiner's Answer, Page 11)(emphasis in original). In the following paragraph, the Examiner's Answer states, "Specifically, with reference to the definition 'or any other links in video and/or audio that link a content recipient to content provided by a content provider', Thomas clearly teaches links in the form of the ancillary codes"

(Examiner's Answer, Pages 11-12)(emphasis in original). As is readily apparent, the Examiner's analysis is, thus, based on a logical error, namely, that one can demonstrate that a definition is met by considering only a portion of that definition. As a result of that fundamental error, the Examiner's Answer reaches the erroneous conclusion that an ancillary code is a media link. However, a piano is not a harp and, as demonstrated in the Second Appeal Brief and the following sections of this Reply, an ancillary code is not a media link.

2. An Ancillary Code Is Not A Media Link

Turning to the substance of the Examiner's position, the Examiner's "piano is a harp" analysis has led him to an incorrect conclusion. The Examiner acknowledges that the applicants' specification defines the term, "media link" as:

media links include URLs embedded in video and/or audio, surrogate URLs, or any other links in video and/or audio that link a content recipient to content provided by a content provider (such as a Web Site) or to content provided elsewhere in the video and/or audio whether such content is stored in cache or not.

(Examiner's Answer, Page 11)(emphasis in original). However, the examiner then looks to only a sliver of this definition in an attempt read it upon the ancillary code of Thomas. In particular, the Examiner states:

Specifically, regarding the recitation, "or any other links in video and/or audio that link a content recipient to content provided by a content provider", note Column 11, Lines 40-42 and Lines 50-54 for the ancillary code (being interpreted as the "media link" by the examiner) uniquely identifies the program and/or station.

Therefore, the ancillary code is clearly a link in video that links a content recipient (the viewer) to content (the program transmitted from the television station) provided by a content provider (the station) by the ancillary code containing information (the media link/links) that inform the viewer which station is transmitting the television program.

(Examiner's Answer, Page 11)(emphasis in original). In other words, the Examiner is arguing that, because the ancillary code of Thomas identifies the program and/or station broadcasting the program in which the code is embedded, it "links" the recipient to content provided by the content provider. It is immediately apparent from the above quotation that the Examiner ignores more than half of the definition of "media link." However, when the entirety of the definition is considered, it can be seen that the applicants have defined a media link to include URLs embedded in video and/or audio,

surrogate URLs, or any other links in video and/or audio *that link a content recipient to content provided by a content provider (such as a Web Site) or to content provided elsewhere in the video and/or audio whether such content is stored in cache or not.*

Thus, when considering the full definition, it is quite plain that a media link must provide a content recipient with a vehicle (i.e., a link) to obtain content to be provided by a content provider such as a web site or to content provided at another portion in the video and/or audio signal in which the media link is embedded. The ancillary codes of the applicants' Thomas Patent do not provide any such link and are, thus, not media links.

More specifically, as explained on pages 12-15 of Applicants' Second Appeal Brief, an ancillary code as used in the applicants' Thomas patent is merely a passive label that uniquely identifies the program and/or station in which the ancillary code is embedded. Far from providing any vehicle to obtain content, the ancillary code of Thomas is an entirely passive label which is hidden, for example, within a vertical blanking interval of a television program to enable an audience measurement company such as the assignee of this application to detect viewing of the program by referencing a code-program name library. (See Thomas, Col. 2, lines 10-24). As such, the ancillary codes of Thomas are not intended to be accessed by the content recipient/audience member or to be used by the recipient at all. Indeed, as can be seen by referencing FIGS. 4 or 6 of Thomas, even if an audience member could access the ancillary code, the ancillary code (e.g., "1FA2377" in FIG. 4 of Thomas) would be quite useless to the audience member as it conveys no functionality for accessing any content. Indeed, the ancillary codes of Thomas convey no information whatsoever to the content recipient/audience member. These ancillary codes are only useful to the

audience measurement company which has access to the code-program name table that is used to correlate the unique ancillary codes to program names (See Thomas, Col. 2, lines 10-24). Without access to that table, the ancillary codes of Thomas have no meaning (See FIG. 4 or 6 of Thomas). Thus, the ancillary codes of Thomas do not connect a content recipient to any content and are not media links.

The Examiner's failure to consider the definition of "media link" as a whole has caused him to disagree with this conclusion. In particular, the Examiner argues:

the ancillary code (being interpreted as the "media link" by the examiner) uniquely identifies the program and/or station. Therefore, the ancillary code is clearly a link in video that links a content recipient (the viewer) to content (the program transmitted from the television station) provided by a content provider (the station) by the ancillary code containing information (the media link/links) that inform the viewer which station is transmitting the television program.

(Examiner's Answer, Page 11). However, while it is true that the ancillary codes of Thomas uniquely identify the programs in which they are embedded and/or the station(s) broadcasting these programs, the remainder of the Examiner's statement is inaccurate. As noted above, the ancillary codes of Thomas do not link the content recipient to content of any kind. On the contrary, those ancillary codes are passive labels that are not intended to be accessed by the content recipient (audience member), and, even if so accessed, would be useless and unintelligible to the content recipient (audience member). Therefore, the Examiner's statement that the ancillary codes "inform the viewer which station is transmitting the television program" is flatly wrong and demonstrates a complete misunderstanding of the ancillary codes of the Thomas Patent. Quite simply, the ancillary codes of Thomas do not inform the audience

member in any way, do not provide the audience member with a vehicle to access content and are, thus, not media links.

The Examiner's argument could be based upon an erroneously overbroad construction of the term "link." In particular, the Examiner may be construing "link" to mean "associated with" as opposed to "addressing or providing access to." In other words, the Examiner may be considering "link" to mean any logical association. However, such a construction of "link" is entirely inconsistent with the examples given in the specification. For example, applicants' specification states:

Also, as used herein, media links include URLs embedded in video and/or audio, surrogate URLs, or any other links in video and/or audio that link a content recipient to content provided by a content provider (such as a Web Site) or to content provided elsewhere in the video and/or audio whether such content is stored in cache or not. *A surrogate URL, for example, may be an ASCII or other code that is embedded in content and that may be used to look up an URL for linking to content. An example of a media link that links a content recipient to content provided elsewhere in the video and/or audio is a trigger that, when received from the video and/or audio, causes content, which was previously transmitted in the video and/or audio and cached by the receiver, to be displayed to the content recipient.*

(Applicants' specification, Page 1, line 17 – Page 2, line 9)(emphasis added). This definition makes it quite clear that a link is provides a connection to content, and is not a mere logical association. Other examples consistent with construing link to mean something that provides access to content are made throughout the applicants' specification. For instance, the applicants' specification states:

It is also expected that this video and/or audio will contain media links. Accordingly, if a user of a computer, digital television, set top box, or other video and/or audio receiving device is viewing a program of interest, and desires to access other information

associated with the program, the user can click on the program. *Clicking on the program will cause a media link, which is embedded in the program, to be sent back to a Web site or other content provider with the result that additional information will be downloaded to the user's appliance. In the case where the media links are self-activating, such as where the media link is a trigger, clicking on the program need not be required. Instead, the media link, when detected by the video, audio, and/or data receiving device, automatically causes display of ancillary content which, for example, may have been previously transmitted in the video, audio, and/or data signal and cached in the receiving device or in auxiliary equipment.*

(Applicants' specification, Page 8, line 17 – Page 9, line 15)(emphasis added). A person of ordinary skill in the art reading the above passages would have no trouble recognizing a media link as a vehicle for connecting to additional content.

This point is further born out by Page 17, lines 2-12 of Applicants' specification. That passage states:

In other cases, particularly where a program has been transmitted for the first time, no information is provided in the look up table from which the program may be identified. In this case, *the media link may be used to access the Web site or content associated with the media link in order to discover the identity of the program*, or the program may be viewed by personnel of the central facility 28 in order to discover the identity of the program.

(Applicants' specification, Page 17, lines 2-11)(emphasis added). Again, it would be impossible for a person of ordinary skill in the art reading applicants' specification to construe the term media link to be a passive ancillary code which labels content, but provides no access to additional content. The clear, unmistakable, usage of the term "media link" throughout the specification is to a vehicle to obtain additional content.

The Examiner, whose position is based on only a portion of applicants' definition of media link and on a failure to consider the above quoted examples from the specification, disputes that a media link must link to additional content.

Specifically, the Examiner argues:

Applicant [sic] asserts that, "*it is quite clear that the applicants have defined the term "media link" to be any link that links a content recipient to additional content*", however the examiner disagrees that the definition stated above is defined to link a content recipient to additional content. Specifically with reference to the definition, "or any other links in video and/or audio that link a content recipient to content provided by a content provider", Thomas clearly teaches links in the form of ancillary codes in the television program (which contains audio and video) that link the viewer/content recipient (who receives the ancillary code) to content (television program received, by the use of the program and/or station identification information) provided by a content provider (the station transmitting the program). This definition only requires a link inside the video to link the viewer to content provided by a provider (and clearly a content provider is capable of providing both a television program and additional information) and there is no recitation in the definition (referenced above by the examiner) for the link to contain information to link to additional information.

(Examiner's Answer, Page 11, line 18 – Page 12, line 9)(emphasis in original). This passage demonstrates that the Examiner's "piano is a harp" type analysis has led him into error. Applicants' definition of media link is not limited to "or any other links in video and/or audio that link a content recipient to content provided by a content provider" as suggested by the Examiner. Rather, the definition as a whole makes it clear that

media links include URLs embedded in video and/or audio, surrogate URLs, or any other links in video and/or audio that link a content recipient to content provided by a content provider (such as a Web Site) or to content

provided elsewhere in the video and/or audio whether such content is stored in cache or not. A surrogate URL, for example, may be an ASCII or other code that is embedded in content and that may be used to look up an URL for linking to content. An example of a media link that links a content recipient to content provided elsewhere in the video and/or audio is a trigger that, when received from the video and/or audio, causes content, which was previously transmitted in the video and/or audio and cached by the receiver, to be displayed to the content recipient.

(Applicants' specification, Page 1, line 17 – Page 2, line 9). Each of a URL, a surrogate URL, and any other links that link a content recipient to content such as a Web site or content provided elsewhere, provides access to (i.e., a link to) additional content as demonstrated by the language of the applicants' definition itself and by the other examples quoted from the specification above (see, e.g., Applicants' specification, Page 8, line 17 – Page 9, line 15, and Page 17, lines 2-11).

Moreover, the Examiner's statement is riddled with other errors. For example, the Examiner states "Thomas clearly teaches links in the form of ancillary codes in the television program (which contains audio and video) that link the viewer/content recipient (who receives the ancillary code) to content (television program received, by the use of the program and/or station identification information) provided by a content provider (the station transmitting the program)." (Examiner's Answer, Page 12, lines 1-5). However, the viewer/content recipient of Thomas does not receive or use the ancillary codes. Instead, the ancillary codes of Thomas are embedded in the program to be hidden from the viewer (e.g., in the vertical blanking interval), but are accessible by an audience measurement company for subsequent determination that the viewer had tuned to the corresponding program.

Second, the television programs in Thomas are not “received, by the use of the program and/or station identification information” provided by the ancillary codes as suggested by the Examiner. To allege otherwise is to reveal a complete misunderstanding of the Thomas system. The ancillary codes of Thomas are hidden from, and useless to, the audience members, and cannot be used to tune programs.

Finally, the Examiner’s above-quoted statement that “there is no recitation in the definition (referenced above by the examiner) for the link to contain information to link to additional information” (Page 12, lines 8-9)(emphasis in original) is misleading as it takes into consideration only a small portion of applicants’ definition of media link and ignores the numerous examples of specification support to the contrary quoted above. Indeed, the Examiner’s statement is flatly contradicted by, for example, Page 8, line 17 – Page 9, line 15, and Page 17, lines 2-11 of the applicants’ specification.

In summary, the Examiner has improperly construed the term “media link” inconsistently with applicants’ specification. The Examiner has made this error by failing to consider the applicant’s specification as a whole and by, instead, considering only a sliver of the definition of “media link” from applicants’ specification, rather than considering the definition in its entirety. However, as will be readily apparent to the Board, a piano is not a harp and the ancillary codes of Thomas are not media links as that term is used in applicants’ specification and claims. Accordingly, the Board should rule in applicants’ favor on ground 1 by reversing the Examiner’s rejections as based on an improper claim construction.

III. Reply To Examiner's Argument For Ground 2 on Appeal

The examiner relies on his erroneous claim construction to contest reversal on Ground 2 of this appeal. Since applicants have demonstrated that the Examiner's claim construction is in error, the Board should likewise rule in favor of applicants on Ground 2 of this appeal. Thomas does not anticipate claim 1 and the rejection to the contrary should be reversed.

IV. Reply To Examiner's Argument For Ground 3 on Appeal

As noted above, the Examiner's analysis is based on an erroneous claim construction. On this basis alone, the Board must rule in favor of the applicants and reverse the rejection of claim 5, which depends from claim 1.

Moreover, the Examiner's argument addressing the additional recitations of claim 5 are also in error. For example, claim 5 recites that the program identifier of claim 1 is arranged to identify the program *by* accessing a content provider. The Examiner acknowledges the presence of this limitation, but allegedly finds it in Thomas. To this end, the Answer states:

Therefore, if the media link (ancillary code) is being identified when a channel is tuned to, then clearly the provider of the television program is being accessed because when a viewer tunes to a television channel, the viewer begins receiving the data necessary to view a television program, which is transmitted by a content provider (the television station), and therefore the content provider (television station) is being accessed.

(Examiner's Answer, Page 13, lines8-13)(emphasis in original). From this quotation, it can be seen that the "accessing the content provider" relied upon by the Examiner is simply tuning into a channel to receive a broadcast program. However, while it is true that the ancillary code of Thomas is embedded in a program, it is obtained *after* the

program is tuned. As discussed above, the ancillary code of Thomas is used by the audience measurement company to identify the tuned program by looking the program name up in a code-program name library using the ancillary code as a key (Thomas, Col. 2, lines 10-24). There is no accessing of the content provider based on the ancillary code, since the ancillary code will not be available until after the program has been tuned (i.e., until after the access alleged by the Examiner has occurred), and since the ancillary code provides no means for performing such an access. Thus, Thomas cannot be said to include a program identifier that identifies a program by accessing a content provider. Thomas identifies a program by extracting an ancillary code from a tuned program and comparing the ancillary code to a list of codes.

Accordingly, Thomas does not anticipate claim 5 and the rejection of claim 5 should be reversed.

V. Reply To Examiner's Argument For Ground 4 on Appeal

As noted above, the Examiner's analysis is based on an erroneous claim construction. On this basis alone, the Board must rule in favor of the applicants and reverse the rejection of claim 6.

Moreover, the Examiner's argument addressing the additional recitations of claim 6 are also in error. For example, the examiner states "Clearly the user tunes to the channel and the media link is identified, which is consistent with the specification of a manual identification being provided by user input (see Page 30 of the specification)." (Examiner's Answer, Page 13, lines 16-18). However, in applicants' claim 6 on appeal, tuning of a television does not involve the program identifier, since claim 1 from which claim 6 depends plainly recites a tuner to tune the program.

Accordingly, the Examiner is mixing apples with oranges by arguing that tuning a program anticipates a program identifier to receive a manual identification of a program tuned by a tuner.

The Examiner is correct that Page 30, lines 4-5 of applicants' specification provides support for the recitation of a program identifier prompting audience members to manually input a program identification. However, the fact that Thomas describes users changing channels is not an anticipation of a program identifier that performs this function. The Examiner's mixing of apples and oranges is in error and must be reversed. Claim 6 is not anticipated by Thomas and the Board should rule in favor of applicants on Ground 4 of the Appeal.

VI. Reply To Examiner's Argument For Ground 5 on Appeal

The Examiner's rejection of claim 24 is based on his erroneous claim construction that the ancillary code of Thomas is a media link. On this basis alone, the Board must rule in favor of the applicants and reverse the rejection of claim 24.

Moreover, the Examiner's argument addressing the additional recitations of claim 24 are also in error. For example, the Examiner erroneously argues that the code-program name library 88 is a library of signatures. This is incorrect. As discussed above, the code-program name library 88 correlates ancillary codes to program names. It does not include broadcast signatures. As explained in applicants' First Appeal Brief:

A program signature is a representation of a portion of the broadcast program. This point is underscored by the usage of the term "broadcast signature" in Thomas, U.S. Patent 5,481,294 ("Thomas"). In particular, Thomas states:

Several broadcast measurement systems have been suggested which do not detect embedded codes in order to identify programs, but which instead monitor program content. These systems generally receive programs to be monitored at a measurement site, extract broadcast signatures from the programs, and compare these broadcast signatures with corresponding reference signatures previously extracted from reference copies of these programs (e.g., distribution tapes) or from previous broadcasts of the programs to be monitored.

(Thomas, Col. 3, lines 35-44)(emphasis added). Thus, the Thomas Patent makes it clear that a “broadcast signature” is not a code embedded in a broadcast signal, but instead is a representation of the broadcast signal itself. This is consistent with the long established industry standard usage of the term “broadcast signature” as evidenced by the following passage from Nielsen’s 1980 patent, Lert et al., U.S. Patent 4,230,990:

Pattern recognition consists of two basic processes: feature extraction and classification. The feature extraction process is applied to the program signal to produce a digital signature of a given program: certain features of the program signal are measured, and these measured values are used to characterize that program. The analog program signal is normally digitized by being passed through an analog-to-digital converter, and program information (either audio or video) is sampled and processed using some non-linear transform (which can be done either digitally or in analog) to produce a digital data set which is essentially unique to a particular program. Such a data set is commonly referred to as a “signature”, “feature set”, or “feature vector”, terms which are to be considered as equivalent and are used interchangeably in this application.

(Lert et al., U.S. Patent 4,230,990, Col. 3, line 55 – Col. 4, line 2). In view of this twenty plus year history of the usage of the term “broadcast signature” in this art, it is clear that a person of ordinary skill in the art would have no difficulty recognizing a broadcast signature as a digital representation of a portion of a broadcast program.

(First Appeal Brief, Pages 11-12)(emphasis in the original). The code-program name library 88 of Thomas does not contain any such broadcast signatures. It stores only ancillary codes and program names, precisely because its function is to enable an

audience measurement company to determine a program name based on an ancillary code. Accordingly, the code-program name library 88 of Thomas does not contain broadcast signatures, and the Examiner’s analysis in support of the rejection of claim 24 is plainly in error.

In view of the foregoing, the rejection of claim 24 is in error and the Board should rule in favor of applicants on Ground 5 of the Appeal.

VII. Reply To Examiner’s Argument For Ground 6 on Appeal

In support of the rejection of claim 29, the Examiner’s Answer states: Thomas clearly teaches that the media link (extracted from the VBI of a TV signal) is closed captioning information because the ancillary code/media link is transmitted in the closed captioning area of the television signal and any information that is carried in the closed captioning area of a TV signal, is inherently closed captioning information.” (Examiner’s Answer, Page 16, lines 15-19).

This analysis is based on two erroneous assumptions. First, it mistakenly assumes that the entire vertical blanking area (VBI) of a television signal is the closed captioning area. In fact, “Closed captioning information is encoded within the video signal, in line 21 of the vertical blanking interval (VBI).” (See http://whatis.techtarget.com/definition/0,289893,sid9_gci864467,00.html). Thus, since the industry standard makes it clear that closed captioning information must be contained on line 21 of the VBI, the closed captioning area is most definitely not the entire VBI, but only line 21 of the VBI.

The Examiner’s analysis also makes the faulty assumption that the ancillary code of Thomas is in the closed captioning area (i.e., line 21 of the VBI). However,

because the ancillary code does not contain any information useful to the viewer, one would not want the ancillary code to be displayed when, for example, a hearing impaired viewer accessed the closed captioning information. Therefore, a person of ordinary skill in the art would never place the ancillary code of Thomas in the closed captioning area of the television signal.

Moreover, the Thomas Patent itself explains that the ancillary code is placed on an unused line of the VBI, not the closed captioning area of the VBI. Specifically, Thomas incorporates Hasselwood, US Patent 4,025,851, by reference (see Col. 11, lines 15-17). Hasselwood describes ancillary codes as follows:

This coded data signal may take the form of a code identifying the program itself, or the code may identify the source of the program and the time that the program originated to permit the program to be identified from the station logs. ***The encoding is done by placing binary data on line 20 or any other unused line in the vertical interval***

(Hasselwood, Col. 2, lines 11-17)(emphasis added). In view of this evidence, it is quite clear that the Examiner's position is based on false assumptions. As a review of the actual facts reveal, Thomas does not place ancillary codes in the closed captioning area (i.e., line 21) of the VBI and, thus, the Examiner's belief that ancillary codes are inherently closed captioning information is inherently incorrect.

In view of the foregoing, it has been demonstrated that the Examiner's argument is based on a complete misunderstanding of Thomas and of closed captioning in general. As such, the rejection of claim 29 is unmistakably in error and must be reversed.

VIII. Reply To Examiner's Argument For Ground 7 on Appeal

The Examiner's Answer again relies on its errored construction of "media link" to challenge this Ground of appeal. As demonstrated above, the Examiner's construction is in error and, thus, cannot be relied upon as a basis to reject Ground 7 of this Appeal.

The Examiner's Answer further argues that it would be obvious to modify Thomas to collect URLs based on Killian because the ancillary codes Thomas uses for audience measurement and the Killian URLs can both be located in the VBI of a television signal (Examiner's Answer, Page 17, lines 13-18). However, the mere fact that both Thomas and Killian utilize the VBI of a television signal does not provide a suggestion for using media links such as URLs in Thomas.

Thomas uses program identification codes (i.e., ancillary codes) to uniquely identify the programs in which they are embedded for the purpose of identifying those programs when received by monitored receiving equipment. Killian describes embedding a media link in a television broadcast program as a vehicle for providing additional content from the Internet to a viewer of that television program. (See Killian, Col. 5, lines 39-50). However, there is no hint in Killian that such a media link would be useful for audience measurement. Thomas also fails to teach or suggest that a media link embedded in a television program, which, by definition, identifies media *different* from the television program in which it is embedded, would be useful to identify the television program in an audience measurement system. Since both Killian and Thomas fail to teach or suggest this concept, the combination of Killian and Thomas also fails to teach or suggest collecting media links embedded in broadcast programs as a vehicle for identifying the broadcast program.

The Examiner attempted to overcome this deficiency in the Thomas/Killian combination by stating it would have been obvious to combine those references “for the purpose of integrating television signals and Internet information.” (Office action dated August 11, 2005, Page 6). However, Killian by itself describes integrating television signals and Internet information. *As such, it has no need for Thomas to achieve the result the Examiner identifies as the alleged motivation to combine.* Further, to the extent the Thomas audience measurement system is employed to monitor a Killian type broadcast, there is no teaching in either Killian or Thomas to collect the embedded media links to identify the broadcast program.

Indeed, Thomas already provides for collecting ancillary codes which are specifically designed to identify the broadcast program in which they are embedded. As such, there is no teaching or suggestion for monitoring media links, which identify *something other than the program being monitored*, in addition to or in place of monitoring ancillary codes, which specifically identify the broadcast program of interest. For example, *substituting media link monitoring for ancillary code monitoring would be less desirable when ancillary codes are present as the media links are not intended to identify the program in which they are embedded, but are instead intended to reference other content.* Thus, there is no identifiable suggestion for modifying Thomas based on Killian to perform media link monitoring. Therefore, because the Examiner has failed to identify a legally cognizable suggestion for modifying Thomas to perform media link monitoring, the obviousness rejections based on Thomas and Killian are in error and must be reversed..

IX. Reply To Examiner's Argument For Ground 8 on Appeal

The Examiner refers to his arguments with respect to Ground 8 as his sole reason for rejecting Ground 8 of Appeal. However, as previously demonstrated in connection with Ground 7, the Examiner's reasoning is in error. Accordingly, both Ground 7 and Ground 8 must be resolved in the applicants favor.

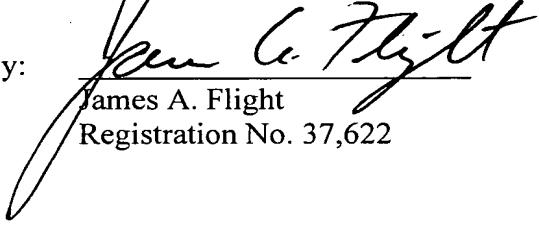
X. Conclusion

In view of the foregoing, Grounds 1-8 must be resolved in favor of the Applicants. All pending claims are patentable to the Applicants and all of the rejections made in the final Office action must be overturned.

Respectfully submitted,

HANLEY, FLIGHT & ZIMMERMAN, LLC.
Suite 4220
20 North Wacker Drive
Chicago, Illinois 60606
(312) 380-1020

By:


James A. Flight
Registration No. 37,622